



226/213
Patent

#7
10-15-98
Chen

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

**CHEN, CHUN-MING
CARPENTER, CHARLES R.
GU, HAOYI
NAQUI, ALI**

Serial No. 08/942,369

Filed: October 2, 1997

For: METHOD AND APPARATUS
FOR CONCURRENTLY
DETECTING PATHOGENIC
ORGANISMS AND
ANTIMICROBIAL
SUSCEPTIBILITY

Group Art Unit: 1623

Examiner: M. Moran

RESPONSE TO RESTRICTION REQUIREMENT

Assistant Commissioner for Patents
Washington, D.C. 20231

Sir:

In response to the Office Action mailed June, 8, 1998, the Applicants submit the following response. A Petition for a three month extension of time included.

SD-81403.1

37 C.F.R. §1.10)

I hereby certify that this paper (along with any referred to as being attached or enclosed) is being deposited with the United States Postal Service on the date shown below with sufficient postage as 'Express Mail Post Office To Addressee' in an envelope addressed to the Assistant Commissioner for Patents, Washington, D.C. 20231.

October 1, 1998
Date of Deposit

Silvia Pearce

Name of Person Mailing Paper

Silvia Pearce
Signature of Person Mailing Paper

The Examiner required Applicants to elect the claims of Group I or II for examination. Group I covers claims 1-11 and 14, and is drawn to an apparatus comprising compartments capable of continuing medium. Group II covers claims 12-18 and is drawn to a method of detecting microorganisms. Applicant hereby elects the claims of Group II with traverse.

MPEP § 803 states that restriction is proper when 1) the inventions are independent and distinct as claimed, **and** 2) there must be a serious burden on the Examiner if restriction is not required. Applicants submit that the restriction requirement is not proper because there is no serious burden placed on the Examiner by searching all claims submitted since all claims relate to the detection of microbes. Claim 1 of Group I, drawn to an apparatus for detecting microbes, is the preferred embodiment for practicing the microbe detection method of Group II, claims 12-18. Given the nature of the technology, no undue burden would be placed on the Examiner since thorough searching of the technology of the elected claims will inherently encompass the subject matter of both claims groups. Accordingly, there is no need to conduct different searches for Groups I and II. Since

there is no additional burden on the Examiner because a search of the subject matter of Group II will inherently encompass Group I as the preferred embodiment of Group II, Applicants respectfully submit that the restriction requirement be withdrawn and the claims of Groups I and II be examined together.

For the reasons detailed above, the Applicants urge reconsideration and withdrawal of the restriction requirement.

Please charge any fees due in connection with this amendment to Deposit Account No. 12-2475. If a telephone conference would in any way facilitate prosecution of the application, the Examiner is encouraged to contact the undersigned at (619) 552-8400, extension 5552.

Respectfully submitted,
LYON & LYON LLP

Date: September 30th, 1998

By: 

John M. Johnson
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